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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/823,355	04/12/2004	Robert Martinson	NOVE100042000/NVLS-2898	4719
83586	7590	04/30/2010		
Delio & Peterson, LLC 121 Whitney Avenue New Haven, CT 06510			EXAMINER BAND, MICHAEL A	
			ART UNIT	PAPER NUMBER
			1795	
			MAIL DATE	DELIVERY MODE
			04/30/2010 PAPER	

Please find below and/or attached an Office communication concerning this application or proceeding.

The time period for reply, if any, is set in the attached communication.

**Advisory Action
Before the Filing of an Appeal Brief**

Application No. 10/823,355	Applicant(s) MARTINSON ET AL.
Examiner MICHAEL BAND	Art Unit 1795

--The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

THE REPLY FILED 21 April 2010 FAILS TO PLACE THIS APPLICATION IN CONDITION FOR ALLOWANCE.

1. ☒ The reply was filed after a final rejection, but prior to or on the same day as filing a Notice of Appeal. To avoid abandonment of this application, applicant must timely file one of the following replies: (1) an amendment, affidavit, or other evidence, which places the application in condition for allowance; (2) a Notice of Appeal (with appeal fee) in compliance with 37 CFR 41.31; or (3) a Request for Continued Examination (RCE) in compliance with 37 CFR 1.114. The reply must be filed within one of the following time periods:

- a) ☒ The period for reply expires 3 months from the mailing date of the final rejection.
b) ☐ The period for reply expires on: (1) the mailing date of this Advisory Action, or (2) the date set forth in the final rejection, whichever is later. In no event, however, will the statutory period for reply expire later than SIX MONTHS from the mailing date of the final rejection.
Examiner Note: If box 1 is checked, check either box (a) or (b). ONLY CHECK BOX (b) WHEN THE FIRST REPLY WAS FILED WITHIN TWO MONTHS OF THE FINAL REJECTION. See MPEP 706.07(f).

Extensions of time may be obtained under 37 CFR 1.136(a). The date on which the petition under 37 CFR 1.136(a) and the appropriate extension fee have been filed is the date for purposes of determining the period of extension and the corresponding amount of the fee. The appropriate extension fee under 37 CFR 1.17(a) is calculated from: (1) the expiration date of the shortened statutory period for reply originally set in the final Office action; or (2) as set forth in (b) above, if checked. Any reply received by the Office later than three months after the mailing date of the final rejection, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

NOTICE OF APPEAL

2. ☐ The Notice of Appeal was filed on _____. A brief in compliance with 37 CFR 41.37 must be filed within two months of the date of filing the Notice of Appeal (37 CFR 41.37(a)), or any extension thereof (37 CFR 41.37(e)), to avoid dismissal of the appeal. Since a Notice of Appeal has been filed, any reply must be filed within the time period set forth in 37 CFR 41.37(a).

AMENDMENTS

3. ☐ The proposed amendment(s) filed after a final rejection, but prior to the date of filing a brief, will not be entered because
(a) ☐ They raise new issues that would require further consideration and/or search (see NOTE below);
(b) ☐ They raise the issue of new matter (see NOTE below);
(c) ☐ They are not deemed to place the application in better form for appeal by materially reducing or simplifying the issues for appeal; and/or
(d) ☐ They present additional claims without canceling a corresponding number of finally rejected claims.

NOTE: _____. (See 37 CFR 1.116 and 41.33(a)).

4. ☐ The amendments are not in compliance with 37 CFR 1.121. See attached Notice of Non-Compliant Amendment (PTOL-324).
5. ☐ Applicant's reply has overcome the following rejection(s): _____.
6. ☐ Newly proposed or amended claim(s) _____ would be allowable if submitted in a separate, timely filed amendment canceling the non-allowable claim(s).
7. ☒ For purposes of appeal, the proposed amendment(s): a) ☐ will not be entered, or b) ☒ will be entered and an explanation of how the new or amended claims would be rejected is provided below or appended.
The status of the claim(s) is (or will be) as follows:
Claim(s) allowed: _____.
Claim(s) objected to: _____.
Claim(s) rejected: 1,2,4-7,9-11,13-18 and 20-24.
Claim(s) withdrawn from consideration: _____.

AFFIDAVIT OR OTHER EVIDENCE

8. ☐ The affidavit or other evidence filed after a final action, but before or on the date of filing a Notice of Appeal will not be entered because applicant failed to provide a showing of good and sufficient reasons why the affidavit or other evidence is necessary and was not earlier presented. See 37 CFR 1.116(e).
9. ☐ The affidavit or other evidence filed after the date of filing a Notice of Appeal, but prior to the date of filing a brief, will not be entered because the affidavit or other evidence failed to overcome all rejections under appeal and/or appellant fails to provide a showing a good and sufficient reasons why it is necessary and was not earlier presented. See 37 CFR 41.33(d)(1).
10. ☐ The affidavit or other evidence is entered. An explanation of the status of the claims after entry is below or attached.

REQUEST FOR RECONSIDERATION/OTHER

11. ☒ The request for reconsideration has been considered but does NOT place the application in condition for allowance because:
See Continuation Sheet.
12. ☐ Note the attached Information Disclosure Statement(s). (PTO/SB/08) Paper No(s). _____.
13. ☐ Other: _____.

/Alexa D. Neckel/
Supervisory Patent Examiner, Art Unit 1795

Continuation of 11, does NOT place the application in condition for allowance because:

On p. 11-12, the Applicant argues that a Terminal Disclaimer has been filed to overcome the Double Patenting rejections.

The Examiner acknowledges that a TD has been filed, with said TD approved on 4/26/2010; the Double Patenting rejections are withdrawn.

On p. 13-14, the Applicant argues that the entire or all of the pedestal shield resides below a top surface of the pedestal plane as supported by Applicant's figs. 2-20, and not just portion thereof as in Tepman et al (i.e. Ref 1).

The Examiner disagrees since Applicant's figs. 2-20 clearly depicts at least part of a portion of the pedestal shield represented by part [50a]-[50f] not being below the top surface of the pedestal, thus the rejection over Ref 1 and the corresponding interpretation is maintained.

On p. 15-19, the Applicant argues that Ref 1 does not teach the pedestal shield that is removably attachable. The Applicant also argues that the combination of Chung et al and Ref 1 do not teach a pedestal shield that resides below a top surface plane of the pedestal and is removably attached.

The Examiner agrees that Ref 1 does not teach the pedestal shield being removably attachable, which is why Chung et al has been cited to teach a similarly constructed pedestal shield that is removably attachable to the pedestal shield, with proper motivation given for combining Chung et al with Ref 1 (See Final Rejection dated 2/18/2010; p. 4-5). Therefore the combination of references teaches a pedestal shield residing below top surface of a pedestal, where said pedestal shield is removably attachable (See Final Rejection dated 2/18/2010; p. 4-5). While the Applicant further attacks the reference Chung et al for not teaching the claimed curvatures of the pedestal and sidewall shields, the Applicant is failing to note that Chung et al has not been cited for this purpose, but to show why one of ordinary skill would be motivated to incorporate the concept of a removably attachable pedestal shield into the pedestal shield of Ref 1. Ref 1 therefore teaches the claimed curvatures of the pedestal and sidewall shield, as stated in the Final Rejection dated 2/18/2010 (See p. 2-4).

On p. 20-22, the Applicant's arguments are directed to superfluous arguments relating to impermissible hindsight and non-existent 102 rejections.

Regarding impermissible hindsight, any judgement on obviousness is in a sense necessarily a reconstruction based on hindsight reasoning, but so long as it takes into account only knowledge which was within the level of ordinary skill in the art at the time the claimed invention was made and does not include knowledge gleaned only from applicant's disclosure, such a reconstruction is proper. See MPEP 2145, Section A. Regarding the non-existent 102 rejection, the Examiner does not understand why arguments are being presented by the Applicant when no 102 rejection is present in the Final Rejection dated 2/18/2010.